

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CONNECTICUT GENERAL LIFE	:	
INSURANCE COMPANY	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 96-CV-4598
	:	
PATRICIA M. CURRY KELLY, et al.,	:	
Defendants.	:	

MEMORANDUM

GREEN, S.J.

September , 1998

Presently pending is Plaintiff Connecticut General Life Insurance Company's Motion for Attorneys Fees and Costs and Defendant Charlotte M. Thuresson Kelly's ("Defendant Thuresson Kelly") response in opposition thereto. For the reasons set forth below, Plaintiff's motion will be granted in part only as to those fees and costs associated with instituting the suit in interpleader and depositing funds into the registry of this court. Plaintiff's request for all other costs and fees will be denied.

FACTUAL BACKGROUND

Plaintiff filed a complaint for interpleader and declaratory relief pursuant to the provisions of the Employee Retirement Income Security Act, 29 U.S. C. §1001 *et seq.*. The fund of money in question is the non-contributory proceeds of a life insurance policy issued on the life of Daniel J. Kelly, Sr., deceased. Defendant Charlotte M. Thuresson Kelly is the decedent's second wife. Defendant Patricia M. Curry Kelly and the remaining defendants are the decedent's first wife and children, respectively. The beneficiary designation form regarding payment of the non-contributory proceeds is blank. Plaintiff therefore alleges that it is unclear as to how the proceeds should be distributed. (Compl., ¶ 18). All of the defendants have asserted a claim to the non-contributory proceeds of the policy.

Plaintiff's instant motion seeks attorneys fees and costs in the amount of \$7592.96 to be paid from the fund. Plaintiff deposited the fund, which presently amounts to \$80,810.03 including the insurance proceeds, plus interest, into the registry of this Court. It asserts that it is entitled to attorneys fees and costs because, as a stakeholder, it is a disinterested party that asserts no adversarial position in this dispute. Defendant Thuresson Kelly avers that because Plaintiff is an insurance company regularly presented with the possibility of conflicting claims, it is not entitled to attorneys' fees and costs in an interpleader action. Defendant Kelly further avers that Plaintiff's fees and costs are inappropriate in that: (1) Plaintiff is requesting fees for work performed almost a year before litigation began; (2) Plaintiff, through motion practice, asserted adversarial positions against defendants, and; (3) Plaintiff's requests for fees will significantly deplete the fund.

DISCUSSION

Determining whether to award costs and attorneys' fees to the stakeholder in an interpleader action is a decision committed to the sound discretion of the trial court. See, Mutual of Omaha Ins. Co. v. Dolby, 531 F.Supp. 511, 516 (E.D. PA 1982). "When a stakeholder has used the court to aid it in making a decision which is an ordinary one in the course of the stakeholder's business, an award of attorneys' fees is not appropriate in the circumstances. Such an award would constitute a shifting of some of the stakeholder's ordinary business expenses to the claimants." Fidelity Bank v. Commonwealth Marine and General Assurance Co., 592 F.Supp 513, 526 (E.D. PA 1984)(citing Dolby, 531 F.Supp at 517). Nevertheless, where the plaintiff in interpleader is an interested party, it is necessary for the court to segregate the costs incurred in performing the 'stakeholder' function and award the plaintiff only those fees." Massachusetts Mut. Life Ins. Co. v. Central Penn Nat. Bank, 372 F.Supp 1027, 1044 (E.D. PA 1974).

Plaintiff has asserted at least two adversarial positions in this matter as it has opposed both Defendant Thuresson Kelly's Motion to Compel and Motion Requesting that Plaintiff Pay Interest on the Insurance Proceeds. Plaintiff's positions on these issues were clearly of an adversarial nature. Specifically, Plaintiff strongly contested paying interest on the proceeds on the grounds that none of the defendants demonstrated that they were entitled to the proceeds. (Pl.'s Mem. Oppos. Pay. Interest at 1, 2). Under the circumstances, I find that Plaintiff is not a disinterested party. I further find it necessary to segregate the costs Plaintiff has incurred in performing its stakeholder function and award those counsel fees associated with the "minimal work" required to institute the suit in interpleader and to deposit the funds into the registry of this court. See, Mass. Mutual, 372 F.Supp. at 1044. Plaintiff will be awarded the following fees and costs associated with instituting the suit in interpleader and depositing the funds into the registry of this court:

Fees Billed:

1.	11/16/95	Prepare Interpleader	\$ 178.50
2.	4/10/96	Revise Interpleader	\$ 42.00
3.	7/03/96	Research on Service Issues	\$ 73.50
4.	11/15/96	Answer Doc Request SE Discovery	\$ 126.00
5.	1/16/97	Answer Interrog.	\$ 62.50
6.	3/03/97	Review Answer to Interrogatories	\$ 50.00
7.	3/05/97	Prepare Motion for Direct Payment	\$ 175.00
8.	3/06/97	Legal Research on Interpleader Iss.	<u>\$ 150.00</u>

Total Fees	\$ 857.50
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Expenses Billed:

9.	6/24/96	Court Fees/ Filing Fees	\$ 120.00
10.	8/06/96	Court Fees/Service of Process	\$ 162.46
11.	8/06/96	Other/Certified Mail	<u>\$ 10.50</u>

Total Expenses	\$ 292.96
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Total Fees and Expenses Awarded	\$ 1150.46
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Insurance companies must routinely determine the appropriate recipient in cases involving multiple claimants to insurance benefits. See, Fidelity, 592 F.Supp. at 526. Costs associated

with doing so cannot be shifted to the fund nor to the claimants. Plaintiff's request for all other fees and costs will therefore be denied.

An appropriate order follows

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CLIFFORD SCOTT GREEN, S.J.